

Private sector takes lead with same-sex spousal benefits

by Kevin Allen

This summer, Ontario's Bill 167 was narrowly defeated in its second reading. A 68-59 vote cancelled the proposed *Equality Rights Statute Law Amendment Act*, which would have ensured the same treatment for gay and lesbian couples as married and common-law heterosexual couples. Bill 167 would have revamped adoption rights, introduced spousal employment benefits packages, and changed property rights and survivor pension laws.

In Quebec, a Human Rights Commission panel has made over 40 recommendations for the Quebec government with regards to the issue of same-sex couples.

Alberta, although far from enacting same-sex spousal benefits legislation, has a handful of corporations leading the way. Unlike the public sector, the private sector has been quick to position itself on this issue, and recognise diversity in the workplace.

In 1990, Nova Corp. was one of the first companies to offer same-sex spousal benefits in the west. Other businesses followed, including both Calgary newspapers, the Calgary Exhibition and Stampede, Shell Canada Ltd. and Northern Telecom Canada Ltd.

Brent Shervey, Corporate Public Affairs Manager of Shell Canada Ltd., said that changes in Shell's policies on same-sex spousal benefits were not so much changes in the plans themselves, but rather clarification in their definition of spouse.

In April 1994, employees were advised via electronic bulletin board that same-sex partners were eligible for benefits. These benefits include health care, dental care, accidental death and long-term disability insurance, which are available to 4,800 Shell employees across the country.

Shell made these clarifications in

response to employees' questions regarding policy and in an attempt to reflect the reality of its workforce.

Federal income tax regulations are more restrictive when it comes to same-sex partners. In fact, in the Income Tax Act same-sex spouses are not recognised as such. As a result, spousal retirement savings plans are not allowed and

Revenue Canada goes on to say that companies audited and found "turning a blind eye" to federal spousal definitions will be advised on "a new course of action which will allow the plan to maintain its tax-exempt status." A sort of 'slap on the wrist' -- with the worst penalty being a retroactive reassessment for the tax breaks taken by the company for gay employees.

Most companies find the cost of extending benefits packages to spouses of gay employees to be nominal. Most surveys seem to indicate that the rise in overall medical and dental costs is between one-quarter and one percent.

This cost may rise if companies elect to pursue separate pension plans for same-sex spouses. For example, Northern Telecom has included pensions in their same-sex benefits plans which came into effect last July. The company plans to pay for it out of general revenues but still does not expect it to be a large sum of money.

Carla McCaugherty, of the Human Resources Department of Nova Corp., said her company is in a 'wait-and-see' mode when it comes to extending pension benefits (pending proposed changes in federal human rights legislation slated for early 1995). Nova is progressive when it comes to extending benefits packages but feels handicapped by both the Income Tax Act and Alberta Health Care --which also does not recognise same-sex spouses.

But the number of claimants for same-sex spousal benefits remains surprisingly low. Of Nova Corp.'s 6,000 employees nation-wide, there are only five who are claiming these benefits from the corporation's western-Canadian division. McCaugherty was unable to speculate on the number of claimants from Eastern-Canada.

Shervey was unable to comment on the number of claimants of same-sex spousal benefits from Shell Canada's



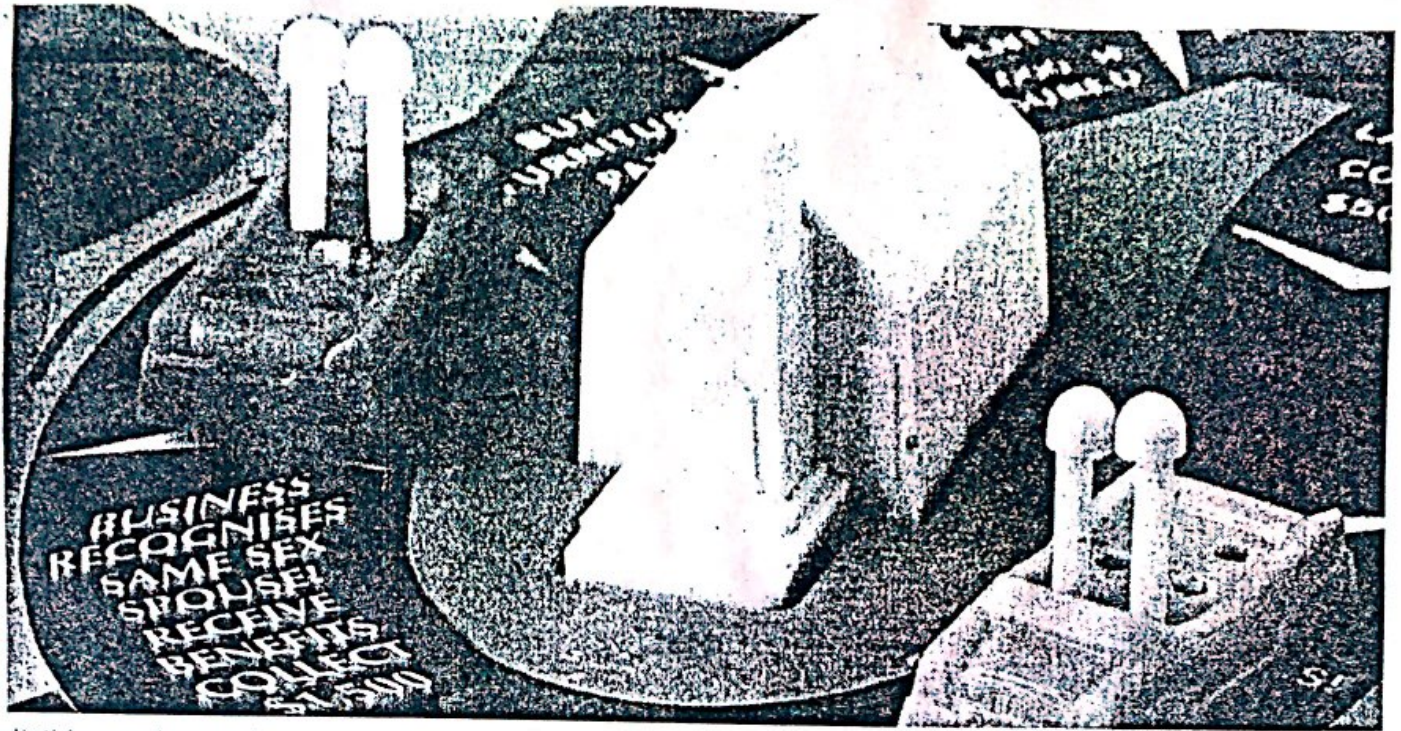
Brent Shervey, Corporate Public Affairs Manager of Shell Canada Ltd., said that changes in Shell's policies on same-sex spousal benefits were not so much changes in the plans themselves, but rather clarification in their definition of spouse.

employers are not given the same tax breaks if they try to cover same-sex spouses in their pension plans.

Consequently, some companies now are turning a blind eye to the law, and offering same-sex spousal benefits and/or pension plans, and hoping they do not get audited. Revenue Canada, ironically, has many suggestions for companies who want to have the benefits, to get around the Income Tax Act.

They suggest the setting up of a "shadow" pension plan for employees with same-sex partners. This would be separate from the existing employee benefits plan. Unfortunately, by dealing with the tax laws in this way, pension contributions made by companies would be subject to 50% tax rates.

Understandably, most companies decline to offer pension benefits because of the expense and because it applies to a relatively small number of people.



eligible employees because of the structure of their benefits plan. Sex of spouse is not recorded and, for the company's purposes, irrelevant. He speculated that, demographically, the number of gay employees would be similar to that of the Canadian population at large.

It seems though, that the real numbers of gay claimants are disproportionately small.

Many Canadian employers extending same-sex spousal benefits are finding no employees coming forward to take advantage of them. One reason may be that the spouse has coverage already and does not need the duplication of extended benefits coverage from his or her partner. Another reason may be that gay employees do not feel comfortable disclosing their personal relationships to Human Resources departments.

Individual provincial political climates may also be a factor whether gay employees claim same-sex spousal benefits. A nation-wide Angus Reid poll last June showed that 54 per cent of Canadians opposed legislation giving spousal benefits and adoption rights to homosexual couples. This figure was 10 per cent higher in Ontario, which was polled during the provincial government's debate of the *Equality Rights Statute Law Amendment Act*.

The opposition to the bill was largely focused on the clauses that would have provided gay couples adoption rights. It was found that 16 per cent of Canadians who had said they opposed the Act were in support of legislation for same-sex spousal benefits.

Across Canada, the provincial and

territorial governments which allow same-sex spousal benefits for their own employees are: British Columbia; New Brunswick; Yukon; and the Northwest Territories.

In both Manitoba and Quebec, the respective Human Rights Commissions have been pressuring their governments to provide same-sex spousal benefits. The Manitoba commission is currently supporting a legal challenge for the extension of same-sex benefits against the

Individual provincial political climates may also be a factor whether gay employees claim same-sex spousal benefits.

provincial government.

The Supreme Court of Canada is dealing with the case of James Egan and John Nesbit, who want spousal pension benefits from Ottawa. They lost at the Federal Court of Appeal last year, and the Supreme Court is their last chance for an appeal. Many see another defeat in the works, because in February 1993, the court ruled that Brian Mossop, a gay federal employee, was not eligible for the work-related benefits given to heterosexual couples.

The battle in Mossop's case ended up being a challenge of the Canadian Human Rights Act, and, because the Act does not include sexual orientation as a prohibited ground for discrimination, the challenge failed. If Justice Minister Allan Rock's proposed amendments to the act would get tabled in Parliament, the

Supreme Court of Canada will have grounds to find for cases like Mossop's in the future.

Many municipal governments in BC -- as well as a handful in Ontario -- have established similar benefits packages. Don Baker at the City of Calgary, says that same sex spousal benefits will be available to all city employees in early 1995. The Municipal Employee Benefits Society has recently included same-sex benefits in their latest contract negotiations. These benefits would mirror those already available for common-law heterosexual couples. Inclusion of the benefits was prompted by employee inquiry.

Many colleges and universities have switched over to a broader definition of spouse for benefits purposes. But the University of Calgary, along with other Alberta institutions, is dragging its heels on the issue.

The last negotiations between the University and its 1,200 workers included an agreement to explore the addition of same-sex spousal benefits to its benefits package, but no one was available for comment as to when the exploration would begin.

It is interesting to note that as the entire country is rethinking its definition of spouse, Alberta remains a bastion of conservatism. The Klein government has resisted attempts to change human rights legislation to protect gays and lesbians from discrimination, yet same-sex spousal benefits are a new reality on the Canadian landscape.

In a quiet way, some companies are providing environments to ensure a productive workforce for everyone.